

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1082 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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JIVANLAL MANILAL

Versus

STATE OF GUJARAT  
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Appearance:

MR PJ VYAS for Petitioners  
MR ND GOHIL, AGP, for the State.  
MR JIVANLAL G SHAH for Respondent No. 2  
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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/07/2000

ORAL JUDGEMENT

1. The petitioners are aggrieved by an order passed  
by Gujarat Revenue Tribunal in Revision Application  
No.916 of 1984 on November 10, 1986 and order passed on

November 30, 1987 in Review Application No.11 of 1987.

2. The facts, in short, are that, survey Nos.710, 711 and 712 situate in the sim (outskirts) of village Pirana, taluka Dascroi, district Ahmedabad, came to be constituted as Block No.527, 528 and 529 under the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947. The lands were of exclusive ownership of one Hargovan Lakhabhai, whose name was entered in the revenue records vide entry No.3604. These lands were ordered to be forfeited by Prant Officer, Viramgam. A civil suit bearing Civil Suit No.2691 of 1955 came to be instituted by Hargovan Lakhabhai in the Court of learned Civil Judge (S.D.), Ahmedabad, which came to be dismissed on August 31, 1959. That judgment and decree was challenged in appeal bearing No.414 of 1959 before the District Court and the learned Assistant Judge (to whom this appeal was transferred), allowed the appeal by judgment and decree dated November 30, 1960. Against that judgment and decree, Government preferred Second Appeal No.771 of 1961 in this Court. That appeal was dismissed by this Court on June 27, 1969 and, therefore, ultimately, the said three blocks came to be mutated in the name of Hargovan Lakhabhai by entry No.3604 dated March 13, 1970.

2.1 According to the petitioners, they were cultivating the said lands as tenants of Hargovan Lakhabhai. However, their names were not shown in the revenue records as tenants. Ultimately, in 1973, an order was passed by the Mamlatdar for entering their names in the revenue records.

3. An application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act was preferred by the petitioners seeking declaration that they are the tenants of the lands in question. The Mamlatdar and Agricultural Lands Tribunal, Dascroi, in Tenancy Case Nos.1989, 1090 and 1091 of 1986, passed an order in favour of the petitioners declaring them as tenants of Survey Nos.710, 711 and 712 situate in village Paladi Kankaj. That order has not been challenged up-till-now and has attained finality. Certificates in this regard have also been issued.

3.1 It is the contention of the petitioners that original land owner, Hargovan Lakhabhai, was one of the trustees of respondent No.2-trust. When Gujarat Agricultural Lands Ceiling Act came into operation, the trust filled in Form as provided under Section 6 of the Act and, in that form, respondent No.2 indicated that

these survey numbers as the survey numbers belonging to the said trust. As a result, the Mamlatdar and Agricultural Lands Tribunal, Dascroi, declared 121 acres and 10 Gunthas of land belonging to respondent No.2 as surplus land by his order dated September 23, 1983, passed in Ceiling Case No.43 of 1976. Aggrieved by the said order, the petitioner preferred appeal before the Deputy Collector, Ahmedabad, being Tenancy Appeal No.37 of 1983. The appeal was dismissed by the Deputy Collector by his order dated January 31, 1984. Similarly situated other tenants had preferred Tenancy Appeals No.36, 38, 39 and 40 of 1983. As the appeal was dismissed, the petitioners preferred Revision Application bearing No.916 of 1984 before the Gujarat Revenue Tribunal. The said revision application came to be rejected by the Gujarat Revenue Tribunal by order dated November 10, 1986, with an observation that the authorities under the Tenancy Act have no jurisdiction to decide the question whether the lands in question belonged to Hargovan Lakhabhai in his personal capacity or are the properties of the public trust and that, unless declaration regarding that question is made by the Charity Commissioner, the Mamlatdar was justified in coming to the conclusion that the lands belonged to the trust.

3.2 The petitioners, therefore, obtained certificate from the office of the Charity Commissioner indicating the properties belonging to Hargovandas and preferred Review Application before the Gujarat Revenue Tribunal under the provisions of Section 17 of the Bombay Revenue Tribunal Act, 1957. The Revenue Tribunal by order dated November 30, 1987, rejected the review application and the petitioners have, therefore, approached this Court with the present petition.

4. The main ground on which the petition is based is that the cases of similarly situated tenants have been favourably considered by the Mamlatdar and they have been held to be tenants of their respective lands and, accordingly, the properties are removed from the properties belonging to the trust and, as a result, the extent of surplus land is decreased. This is done in Ceiling Case No.43 of 1976, decided by the Mamlatdar and Agricultural Lands Tribunal (Ceiling), Taluka Dascroi, district Ahmedabad, vide his order dated March 31, 1994. The petitioners' grievance is, therefore, that, although similarly situated, their case is viewed differently.

5. Mr. Vyas, learned advocate appearing for the petitioner, has reiterated the above aspects and

submitted that the order impugned in this petition may be quashed and set aside and that the land may not be shown as excess land belonging to respondent No.2-trust.

6. Mr. J.G. Shah, learned advocate for respondent No.2, has opposed this petition. Likewise, Mr. Gohil, learned Assistant Government Pleader appearing for the State, has also opposed this petition.

7. Having regard to the contentions raised in the matter, it is amply clear that the petitioner has been declared to be a tenant of the lands in question by a statutory authority. He has been in possession thereof. The whole impasse is the outcome of a mistaken mention in the form filled in by respondent No.2-trust, wherein it has shown these properties as the properties belonging to the trust. Apart from the the properties in question, certain other properties have also been shown in that form as the properties belonging to the trust, whereas in such properties, similarly situated tenants were occupying and they were also adversely affected (by virtue of the order of the Mamlatdar and Agricultural Lands Tribunal dated March 31, 1994, passed in Ceiling Case No.43 of 1976, (copy of which is produced by learned advocate, Mr. Vyas, on record), those tenants' case has been set at rest by declaring their respective holdings as properties not belonging to the trust and being removed from the areas declared as surplus land. The case of the petitioners, therefore, deserves to be considered in that light and spirit. The ends of justice, therefore, would be met, if the impugned orders are quashed and set aside and the matter is remanded to the Mamlatdar and Agricultural Lands Tribunal, Dascroi for deciding the case of the petitioners afresh. Hence, so ordered. The Mamlatdar and Agricultural Lands Tribunal, therefore, will decide the case of the petitioners in light of decision taken by it in Ceiling Case No.43 of 1976 on March 31, 1994. The Mamlatdar shall give audience to the parties and shall dispose of the case as early as possible, preferably, within three months. The petition is allowed to the above extent. Rule is made absolute to that extent. No costs.

[ A.L. DAVE, J. ]

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